



Office of the Attorney General
State of Texas

June 4, 1993

DAN MORALES
ATTORNEY GENERAL

David R. Smith, M.D.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756

OR93-274

Dear Dr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19402.

The Texas Department of Health (the "department") received a request for information concerning an investigation of neglect in a nursing home licensed by the department. Specifically, the request is for "a copy of the Incident Investigation validation report . . . relating to the death of Frank J. Heckler, Sr., deceased."

You contend that the requested information is excepted from required public disclosure by section 3(a)(1) of the Open Records Act (the "act") in conjunction with section 242.127 of the Health and Safety Code. You also ask whether the children of the deceased may have a special right of access to the information pursuant to section 3B of the act if the information is otherwise excepted from disclosure by section 3(a)(1). The documents you submitted for our review do not indicate whether the children of the deceased or the attorney for the children are authorized representatives of a person as contemplated by section 3B. *See also* Open Records Decision No. 481 (1987) (*governmental agency cannot disclose to husband private financial information concerning wife when the information is excepted by section 3(a)(1).*) Therefore, we cannot address whether section 3B may apply in this context.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 242.127 of the Health and Safety Code provides:

A report, record, or working paper used or developed in an investigation made under this subchapter, [Reports of Abuse and Neglect], is confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency.

See also Health and Safety Code § 242.134 (reports of deaths in licensed nursing facilities not subject to the Open Records Act.) You state that the department investigated the reported incidence of neglect and concluded that the report was valid. The department rules provide for disclosure of the investigation report of valid cases of neglect only to the district attorney and appropriate law enforcement agency *See* 25 T.A.C. § 145.88(i). Moreover, section 145.89, which provides for procedures for inspection of public records, specifically states that reports of abuse and neglect are not open to the public unless specifically authorized by section 145.88. *See id.* § 145.89. Therefore, the documents are excepted from required public disclosure by section 3(a)(1) in conjunction with section 242.127 of the Health Safety Code. You must withhold the requested information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Opinion Committee

LRD/SG/le

Ref.: ID# 19402

Enclosures: marked documents

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